

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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January 8, 2014

Lawrence D. Laufer, Esq.
Genova Burns Giantomasi Webster LLC
115 Broadway, 15th Floor
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Re: Conflicts of Interest Board Case No. 2013-899 (Bill de Blasio)

Dear Mr. Laufer:

This is in response to your letter, dated December 16, 2013, to the Conflicts of Interest Board (the "Board"), and subsequent communications with Board staff, requesting an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the New York City Charter, Mayor-Elect Bill de Blasio may, upon taking office as Mayor on January 1, 2014, engage in fundraising on behalf of the Campaign for One New York, Inc. (the "Corporation").

You advise the Board that the Corporation is a newly formed New York not-for-profit corporation that was created to advocate on behalf of the City of New York by informing the public and policymakers about legislative and public policy options; that the Corporation is a charitable organization that is subject to the registration and reporting requirements set forth in New York Executive Law Article 7-A and enforced by the Attorney General's Charities Bureau; that as a social welfare organization it is expected that the Corporation will qualify as a tax exempt organization pursuant to Section 501(c)(4) of the Internal Revenue Code; that in all likelihood the Corporation will be engaged in lobbying and will therefore register and file periodic reports with the Joint Commission on Public Ethics ("JCOPE"); and that the Corporation's expenditures for direct and indirect lobbying activities and the donations that it receives for lobbying activities will be reported to JCOPE, as required.

You further advise that neither Mayor de Blasio nor his wife, Chirlane McCray, will participate in, or have any legal rights or responsibilities with respect to, the governance of the Corporation and that neither Mayor de Blasio nor Ms. McCray will have a position with the Corporation. You also advise, however, that, without limiting the foregoing, among the Corporation's staff or consultants may be individuals who have been or will be employed or retained by a political campaign committee that Mr. de Blasio has authorized to work in support

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of his electoral efforts. In this regard you advise that among the three incorporators (and initial directors) of the Corporation is Bill Hyers, who, the Board is advised, was the manager of Mr. de Blasio's 2013 mayoral campaign.

You advise that Mayor de Blasio and/or Ms. McCray may from time to time be asked by the Corporation to participate in fundraising efforts for the Corporation; that such assistance might include the designation of the Mayor or Ms. McCray as an "honorary chair" of a fundraising campaign; that it is further contemplated that the Mayor may choose to use his official position to solicit funds for the Corporation should he determine that the Corporation's work would support a major initiative of the Office of the Mayor; that the Mayor would solicit such funds consistent with the Board's guidance in Advisory Opinions as Nos. 2003-4 and 2008-6 on targeted and untargeted solicitations; and that Ms. McCray will adhere to the same restrictions on targeted fundraising that will be applicable to the Mayor himself.

Charter Section 2604(b)(2) prohibits a public servant from engaging in any business, or having any private interest, that conflicts with the proper discharge of his or her official duties.

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her City position to obtain any private advantage for the public servant or for any person or firm associated with the public servant. Charter Section 2601(5) defines those "associated" with a public servant to include a spouse, domestic partner, child, parent, or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

In Advisory Opinion No. 2003-4 the Board addressed the question of fundraising by City officials for the City itself and for not-for-profit entities determined to be closely affiliated with City offices and agencies. The Board reserved, however, the question of "what *other* kinds of not-for-profit entities might be permissible beneficiaries of officials' fundraising." *Id.* at 2 (emphasis added).

In Advisory Opinion No. 2008-6 the Board addressed this reserved question and determined that elected officials and agency heads, and their specified designees, may in their official capacities, using City time and resources, participate in fundraising for certain not-for-profit organizations *not affiliated* with the City, **provided that** (1) the work of the not-for-profit organization must have some nexus with the City and further must support the mission of the elected official or agency head's City office or agency (the Board observed that this latter limitation would not greatly restrict otherwise permissible fundraising of those elected officials "whose official responsibilities are defined quite broadly," such as the Mayor and the Public Advocate; *id.* at 7-8); (2) the elected official or agency head may not be personally associated within the meaning of Charter Section 2601(5) with the not-for-profit organization or its compensated leadership; (3) the fundraising solicitations on behalf of the not-for-profit must comply in all respects with the requirements of Advisory Opinion No. 2003-4, including that the solicitations contain an express statement that a decision whether or not to give will not result in official favor or disfavor and that, as to "targeted" solicitations (as defined in Opinion No. 2003-

4), the "official could [not] solicit any person or firm with a matter 'pending or about to be pending before the City official or his or her agency, where it is within the legal authority or the duties of the soliciting official to make, affect, or direct the outcome of the matter'"; and (4) the elected official or agency head must identify each not-for-profit for which support is solicited in a public report to be filed with the Board by May 15 and November 15 of each year for the sixth-month period ending March 31 and September 30, respectively.

Here, it is the view of the Board that Mr. de Blasio's proposal to solicit funding in his official capacity as Mayor for the Corporation conforms with the requirement of Advisory Opinion No. 2008-6 that the organization must support the mission of the office of the soliciting official, given that the purpose of the Corporation lies in advocating for New York City. In addition, based on your representations, this request likewise satisfies the condition that the soliciting official may not be personally associated, within the meaning of Charter Section 2601(5), with the organization or with its compensated leadership.

More particularly, Mr. de Blasio will not be associated with the Corporation itself because, you advise, he will not have a position at the Corporation nor otherwise have any legal rights or responsibilities with respect to its governance. In addition, he will not be associated with any of the Corporation's staff, inasmuch as his wife, with whom he is associated, will not, you advise, have a position at the Corporation, and inasmuch as he will not be associated with any of the Corporation's employees, including any of his campaign staff who may be employed there. In this regard, it is the view of the Board that a public servant is not associated within the meaning of Section 2601(5) with persons who are employed by campaign committees formed by that public servant for the purpose of seeking elective office. Such individuals are employees of or consultants to the campaign committee, not employees of or consultants to the candidate in question. Moreover, while it is well settled that a public servant will violate Charter Section 2604(b)(3) by supervising an "associated" person, the Board determined in Advisory Opinion No. 2003-6 that the subordinate of a public servant who is seeking elective office may simultaneously serve as staff of the public servant's campaign committee. That result necessarily meant that a public servant/candidate does not become "associated" with the subordinate when the subordinate goes to work for the campaign committee.

Because Mr. de Blasio's proposed solicitation may include "targeted" solicitations, as that term is defined in Advisory Opinion No. 2003-4, any such solicitations may not be addressed to anyone "with a matter 'pending or about to be pending' before the City official making the solicitation, or his or her agency, 'where it is within the legal authority or the duties of the soliciting official to make, affect, or direct the outcome of the matter.'" It is the Board's conclusion that, as applied to the Mayor, the "agency" referred to is the entire executive branch, other than offices of other elected officials, because the Mayor has the legal authority to "make, affect or direct the outcome" of all matters pending before such executive branch agencies. See Charter Section 2604(a)(5). Mayor de Blasio may not, therefore, direct a targeted solicitation to any individual who has, or whose organization has, a matter pending or about to be pending before any such executive branch office or agency. If you have any question about the application of this standard to a particular individual or entity, you should seek further guidance

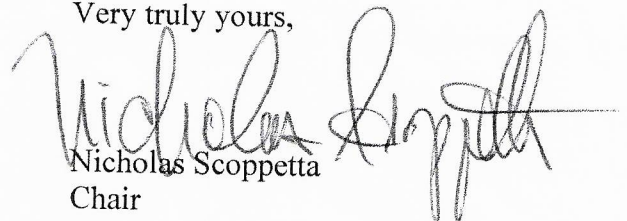
from the Board, giving the nature and status of the specific matter pending or about to be pending before the office or agency in question.

You are accordingly advised that, based on your representations, it would not violate Chapter 68 for Mayor de Blasio to solicit funds for the Corporation and to use City letterhead and resources to do so, **provided that** all such solicitations must include the statement that a decision to give or not give will not result in official favor or disfavor; that the Corporation is identified in each public report to be filed with the Board pursuant to Opinion No. 2008-6 for each six-month period in which the Mayor or his designee undertakes such activity; and that none of these solicitations is targeted to any person or organization with a matter pending or about to be pending before any executive branch office or agency, other than offices of other elected officials.

Finally, you are advised that Mayor de Blasio may not request any public servants who are his subordinates to work for the Corporation, although these subordinates may volunteer to do so. That said, any public servant, whether or not a subordinate of the Mayor, who proposes to serve the Corporation would be well advised to first seek the Board's advice to ensure that this activity would not violate the prohibitions of Chapter 68, including, without limitation, the prohibition in Charter Section 2604(a)(1)(b) against having a position with a firm that has business dealings with the City, the prohibition in Charter Section 2604(b)(6) against compensated communications with the City on behalf of a non-City entity, and the prohibition in Charter Section 2604(b)(13) against receiving compensation except from the City for performing one's City duties.

The advice conveyed expressed in this letter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given to you may not apply. If at any time you would like further advice based on a change of circumstances or additional information, please contact us.

Very truly yours,



Nicholas Scoppetta
Chair

Anthony Crowell
Andrew Irving
Burton Lehman
Erika Thomas-Yuille